

Attorney Docket No.: WSTR-0017K
Inventors: Gerhard and Otvos
Serial No.: 10/541,771
Filing Date: November 30, 2005
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REMARKS

Claims 1-15 are pending in the instant application. Claims 1-15 have been rejected. Claim 1 has been amended. No new matter has been added by this amendment. Reconsideration is respectfully requested in light of the following remarks.

I. Election/Restriction Requirement

The Examiner acknowledges Applicants' traversal of R1=Cys-Gly, R2=influenza T cell determinant, R3=influenza B cell determinant, R4=absent because Xaa1=0 and R5=Ala; however, the requirement for election of a single species of R1, R2, R3, R4, and R5 has been deemed proper and made final.

II. Rejection of the Claims Under 35 U.S.C. §102

Claims 1-3 have been rejected under 35 U.S.C. 102(b) as being anticipated by Kragol et al. ((2001) *Bioorganic & Medicinal Chemistry Letters* 11:1417-1420). It is suggested that Scheme 1, constructs 2 and 7, anticipate the invention. Applicants respectfully disagree with this rejection.

As set forth in elected subject matter of claim 1, Xaa₁ is 0. Neither of construct 2 nor 7 of Kragol et al. is a multiple antigenic agent wherein Xaa₁ is 0. Alternatively stated, while constructs 2 and 7 have one Lys-Gly repeat with a B-cell determinant attached thereto (*i.e.*, M2), these constructs possess an addition Lys-M2 residue, which is not present in the instant composition.

In order for a reference to anticipate a claim, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868

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F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). MPEP §2131.

To highlight the distinction between constructs 2 and 7 of Kragol et al. and the instant multiple antigenic agent, Applicants have amended claim 1 to remove reference to Xaa₁. Because Kragol et al. fail to teach or suggest the claimed multiple antigenic agent, this reference cannot be held to anticipate the present invention. It is therefore respectfully requested that this rejection be reconsidered and withdrawn.

III. Rejection of the Claims Under 35 U.S.C. §103

Claim 4 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Kragol et al. (2001) *supra*. It is suggested that Kragol et al. teach the claimed compound, but are silent to other ingredients combined with the purified compounds. The Examiner suggests, however, that Kragol et al. explicitly suggest use of the products for immunologic studies, which are frequently performed using pharmaceutically acceptable carriers, thereby making claim 4 obvious.

Claims 5-15 have also been rejected under 35 U.S.C. 103(a) as being unpatentable over Kragol et al. (2001) *supra* as applied to claims 1-4 above, and in further view of Neirynck et al. ((1999) *Nature Med.* 5:1157-1163). It is acknowledged that Kragol et al. do not teach all the claim limitations, however, Neirynck et al. teach that the M2e antigen used in Kragol et al. is an effective immunogen for preventing influenza, when presented on a carrier molecule, with or without an adjuvant. It is suggested that one would reasonably have expected similar success using the

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same antigen presented on the alternative carrier of Kragol et al. Applicants respectfully traverse this rejection.

As indicated above, Kragol et al. fail to teach or suggest the multiple antigenic agent set forth in amended claim 1, and claims dependent therefrom. As such, Kragol et al. cannot be held to make the subject matter of claim 4 obvious. Moreover, in so far as Neirynck et al. merely teach the use of M2e antigen as an effective immunogen, this reference cannot be held to compensate for the deficiencies in the teachings of Kragol et al. As such, the combined teachings of Kragol et al. and Neirynck et al. fail to teach or suggest all the claim limitations of claims 5-15 as required under 35 U.S.C. 103 to establish a *prima facie* case of obviousness. Therefore, it is respectfully requested that these rejections under 35 U.S.C. 103(a) be reconsidered and withdrawn.

IV. Double Patenting

Claims 1-15 have been suggested to conflict with claims 1-16 of copending Application No. 11/910,025. Claims 1-15 have been provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-16 of the copending application.

Applicants respectfully request that this rejection be held in abeyance until allowable subject matter has been identified in copending Application No. 11/910,025.

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V. Conclusion

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record. Accordingly, allowance of the pending claims is earnestly solicited.

Respectfully submitted,



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